1. Tax computed under 1378(b) (2)	$377,500
2. Tax computed under 1378(b) (2) with modification	281,500
3. Excess	96,000
4. Tax actually imposed under 1378	60,000
5. Difference	36,000
6. Normal tax rate plus surtax rate	.48
7. Tax preference (line 5 divided by line 6)	$75,000

In addition each shareholder of X will take into account his distributive share of the $650,000 of net section 1201 gain of X less the taxes paid by X under sections 56 and 1378 on the gain

[T.D. 7564, 43 FR 40483, Sept. 12, 1978]

§ 1.58–5 Common trust funds.

Section 58(e) provides that each participant in a common trust fund (as defined in section 584 and the regulations thereunder) is to treat as items of tax preference his proportionate share of the items of tax preference of the fund computed as if the fund were an individual subject to the minimum tax. The participant's proportionate share of the items of tax preference of the fund is determined as if the participant had realized, or incurred, his pro rata share of items of income, gain, loss, or deduction of the fund directly from the source from which realized or incurred by the fund. The participant's pro rata share of such items is determined in a manner consistent with section 1.584–2(c). Items of tax preference apportioned to a participant pursuant to this paragraph are taken into account by the participant for the participant's taxable year in which or with which the taxable year of the trust ends.

[T.D. 7564, 43 FR 40484, Sept. 12, 1978]

§ 1.58–6 Regulated investment companies; real estate investment trusts.

(a) *In general.* Section 58(f) provides rules with respect to the determination of the items of tax preference of regulated investment companies (as defined in section 851) and their shareholders and real estate investment trusts (as defined in section 856) and their shareholders, or holders of beneficial interest. In general, the items of tax preference of such companies and such trusts are determined at the company or trust level and the items of tax preference so determined (other than the capital gains item of tax preference (sections 57(a)(9) and §1.57–1(i)) and, in the case of a real estate investment trust, accelerated depreciation on section 1250 property (sections 57(a)(2) and §1.57–1(b)) are treated as items of tax preference of the shareholders, or holders of beneficial interest, in the same proportion that the dividends (other than capital gains dividends) paid to each such shareholder, or holder of beneficial interest, bear to the taxable income of such company or such trust determined without regard to the deduction for dividends paid. In no case, however, is such proportion to be considered in excess of 100 percent. For example, if a regulated investment company has items of tax preference of $500,000 for the taxable year, none of which resulted from capital gains, and distributes dividends in an amount equal to 90 percent of its taxable income, each shareholder treats his share of 90 percent of the company's items of tax preference, or (a proportionate share of) $450,000, as items of tax preference of the shareholder. The remaining $50,000 constitutes items of tax preference of the company. Amounts treated under this paragraph as items of tax preference of the shareholders, or holders of beneficial interest, are deemed to be derived proportionately from each item of tax preference of the company or trust, other than the capital gains item of tax preference and, in the case of a real estate investment trust, accelerated depreciation on section 1250 property. Such amounts are taken into account by the shareholders, or holders of beneficial interest, in the same taxable year in which the dividends on which the apportionment is based are includible in income. The minimum tax exemption of the trust or company shall not be reduced because a portion of the trust's or company's items of tax preference are allocated to the shareholders or holders of beneficial interests.

(b) *Capital gains.* Section 58(g)(1) provides that a regulated investment company or real estate investment trust does not treat as an item of tax preference the capital gains item of tax preference under section 57(a)(9) (and §1.57–1(i)) to the extent that such item is attributable to amounts taken into income by the shareholders of such

company under section 852(b)(3) or by the shareholders or holders of beneficial interest of such trust under section 857(b)(3). Thus, such a company or trust computes its capital gains item of tax preference on the basis of its net section 1201 gain less the sum of (1) the capital gains dividend (as defined in section 852(b)(3)(C) or 857(b)(3)(C)) for the taxable year of the company or trust plus (2), in the case of a regulated investment company, that portion of the undistributed capital gains designated, pursuant to section 852(b)(3)(D) and the regulations thereunder, by the company to be includible in the shareholder's return as long-term capital gains for the shareholders's taxable year in which the last day of the company's taxable years falls. Amounts treated under section 852(b)(3) or 857(b)(3) as long-term capital gains of shareholders, or holders of beneficial interest, are automatically included, pursuant to sections 57(a)(9) and 1.57–1(i), in the computation of the capital gains item of tax preference of the shareholders, or holders of beneficial interest.

(c) *Accelerated depreciation on section 1250 property*. In the case of a real estate investment trust, all of the items of tax preference resulting from accelerated depreciation on section 1250 property held by the trust (section 57(a)(2) and §1.57–1(b)) are treated as items of tax preference of the trust, and, thus, none are treated as items of tax preference of the shareholder, or holder of beneficial interest.

[T.D. 7564, 43 FR 40484, Sept. 12, 1978]

§1.58–7 Tax preferences attributable to foreign sources; preferences other than capital gains and stock options.

(a) *In general*. Section 58(g)(1) provides that except in the case of the stock options item of tax preference (section 57(a)(6) and §1.57–1(f)) and the capital gains item of tax preference (section 57(a)(9) and §1.57–1(i)), items of tax preference which are attributable to sources within any foreign country or possession of the United States shall, for purposes of section 56, be taken into account only to the extent that such items reduce the tax imposed by chapter 1 (other than the minimum tax under section 56) on income derived from sources within the United States. Items of tax preference from sources within any foreign country or possession of the United States reduce the chapter 1 tax on income from sources within the United States to the extent the deduction relating to such preferences, in combination with other foreign deductions, exceed the income from such sources and, in effect, offset income from sources within the United States. Items of tax preference, for this purpose, are determined after application of §1.57–4 (relating to limitation on amounts treated as items of tax preference). In the case of a taxpayer who deducted foreign taxes under section 164 for a taxable year, the provisions of this section shall be applied (without regard to section 275(a)(4)) as if he had elected the overall foreign tax credit limitation under section 904(a)(2) for such year.

(b) *Preferences attributable to foreign sources*—(1) *Preferences other than excess investment interest*. Except in the case of excess investment interest (see subparagraph (2) of this paragraph), an item of tax preference to which this section applies is attributable to sources within a foreign country or possession of the United States to the extent such item is attributable to a deduction properly allocable or apportionable to an item or class of gross income from sources within a foreign country or possession of the United States under the principles of section 862(b), or section 863, and the regulations thereunder. Where, in the case of income partly from sources within the United States and partly from sources within a foreign country or possession of the United States, taxable income is computed before apportionment to domestic and foreign sources, and is then apportioned by processes or formulas of general apportionment (pursuant to section 863(b) and the regulations thereunder), deductions attributable to such taxable income are considered to be proportionately from sources within the United States and within the foreign country or possession of the United States on the same basis as taxable income.

(2) *Excess investment interest*—(*i*) *Per-country limitation*—(*a*) In the case of a